common law. The United States Supreme Court[9] and several other courts have, however, reached the contrary result. Their attempt to find a consideration constituting value in the duty to present and give notice of dishonor seems illusory, and is obviously without foundation in the case of bearer paper. Commercial usage alone can be its justification. Several cases decided under the Negotiable Instruments Law to the effect that a transfer to secure an antecedent debt is a transfer for value[10] had encouraged the hope that the codification had effectually changed the rule so that all jurisdictions adopting this statute would be uniform on this point, as they are in the case of a transfer in payment of an antecedent debt. A New York case of last year, however, reaching the contrary result, has dispelled that hope. *Sutherland* v. *Mead*, 80 N. Y. App. Div. 103. This is probably contrary to the intention of the draughtsmen, but the blame must attach rather to the Act than to the court.

THE STANDARD OF CARE FOR CHILDREN. — It would obviously be unjust to judge the conduct of a child by the standards set for adults; it would be equally so to absolve him in every case from the consequences of his own negligence. An intermediate position has accordingly been taken, in most jurisdictions, requiring of infants the exercise of such care in avoiding injury as children of the same age of ordinary prudence are accustomed to exercise under the same or similar circumstances.[1]

In cases of contributory negligence two limitations upon this general rule have, however, been urged. Of these the first tends to restrict the scope of the rule. Thus it is assumed that infants *non sui juris* — that is, incapable in the judgment of the jury, of taking care of themselves — are not, in law, chargeable with the duty of exercising care to avoid injury.[2] It is difficult to support this position. To permit any individual who is capable of exercising care to be a heedless instrument of his own injury seems clearly at variance with the fundamental principle of the doctrine of contributory negligence. If, on the other hand, the theory is that all infants *non sui juris* are so devoid of judgment as to be incapable of negligence, that proposition is not true in fact. It can safely be asserted that experience teaches every child the danger of contact with various objects long before he may be termed *sui juris*. On such grounds the New York court lately decided that a refusal to instruct the jury that an infant *non sui juris* is answerable for his own negligence constitutes reversible error. *Atchason* v. *United Traction Co.*, 90 N. Y. App. Div. 571.

The second limitation referred to, and one which substantially alters the general rule, is suggested by a recent Georgia case. *Eagle & Phenix Mills* v. *Herron*, 46 S. E. Rep. 405. The court required of a child such care to avoid injury as his individual mental and physical capacity at the time fitted him to exercise. In testing the conduct of an adult, the law takes as a standard the case of the ordinarily prudent man under the circumstances, and declines to consider the personal equation.[3] It is hard to see why this refusal should not apply to children as well as to adults. Under similar circum-

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[9] Railroad Co. *v.* National Bank, 102 U. S. 14.

[10] Payne *v.* Zell, 98 Va. 294.

[1] Cleveland Rolling Mill Co. *v.* Corrigan, 46 Oh. St 283.

[2] See Kitchell *v.* Brooklyn Heights R. R. Co., 6 N. Y. App. Div. 99; Hyland *v.* Burns, 10 N. Y. App. Div. 386.

[3] Holmes, The Common Law 108 *et seq.*

stances it seems reasonable to expect of most children of the same age a certain degree of prudence. Why, then, in analogy to the rule as applied to adults, should not such care be required of a child as is, under the circumstances, commensurate with his age? To demand less of a child whose mental and physical development has been slow, or more of the infant prodigy, would, it is thought, be an unwise departure from the settled policy of the law of negligence. Nor have all previous Georgia decisions upon this point been inconsistent with this view.[4] If these objections are sound, it follows that the limitations above discussed should not be adhered to. The general rule needs no limitation. Both in principle and on authority it seems to define the standard of care for children satisfactorily, in negligence and contributory negligence alike.

RIGHT OF CONTRIBUTION IN PLEDGED STOCK REPLEDGED. — A broker held stock belonging to three people. He had purchased certain stock for X on a margin; M had pledged other stock with him to secure a loan; and H had deposited still other stock with him for safe keeping. All the certificates bore assignments in blank. The broker pledged the whole amount as security for money advanced by T, who relied in good faith on the broker's apparent title. The broker became insolvent, and T sold the securities of M and X, thereby obtaining enough to repay the loan. M and X knowing these facts tendered the broker the amount of their debts. In such a case should H share the loss with M and X? The court held that H was entitled to his securities free and clear. *Tompkins* v. *Morton Trust Co.*, 91 N. Y. App. Div. 274.

There is no doubt that T could enforce the pledge against all the stock, because the blank assignments gave the broker an apparent title.[1] Further, any beneficial interest of the broker in such stock should be first exhausted, since the broker is the real debtor, and the one on whom the burden should ultimately fall.[2] The stock of M had been pledged to the broker for a loan. To the extent to which the broker had advanced money on that stock, he had a beneficial interest in it, and to that extent therefore the stock of M should rank as the broker's own. Similarly, X's stock being carried on margin would almost universally be regarded as pledged, and should be treated in the same way as M's.[3] Some courts, indeed, give the broker a greater interest in X's stock, and recognizing the custom of the business consider the broker authorized to repledge it without regard to the amount of his advance.[4] If such a custom is to be recognized, X's stock should be treated as the broker's own in repaying T's advance.[5] The better view, however, which is probably also the New York law, is that this custom should not be recognized.[6] Hence, after the beneficial interest of the broker is exhausted, there remain liable for any unpaid balance the beneficial interests of M and X and the stock of H, all alike wrongfully pledged.

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[4] See Western & A. R. Co. *v.* Young, 83 Ga. 512.

[1] McNeil *v.* Tenth National Bank, 46 N. Y. 325.
[2] Gould *v.* Central Trust Co., 6 Abt. N. C. 281.
[3] Markham *v.* Jaudon, 41 N. Y. 235; *contra*. Covell *v.* Loud, 135 Mass. 41.
[4] Willard *v.* White, 56 Hun (N. Y.) 581; Skiff *v.* Stoddard, 63 Conn. 198.
[5] Skiff *v.* Stoddard, *supra*.
[6] Douglas *v.* Carpenter, 17 N. Y. App. Div. 329.